

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 27 2002

OFFICE OF
MANAGING DIRECTOR

Audrey P. Rasmussen
David L. Hill
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
1120 20th Street, N.W.
Suite 700, North Building
Washington, D.C. 20036-3406

RE: Request for Waiver of 2002
Regulatory Fees
Fee Control No. 00000RROG-02-073

Dear Ms. Rasmussen and Mr. Hill:

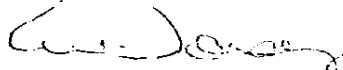
This is in response to the request for waiver of Fiscal Year (FY) 2002 regulatory fees, filed on behalf of WebLink Wireless, Inc. (WebLink) and its two subsidiaries, PageMart II, Inc. and PageMart PCS, Inc. The fees in question relate to wireless licenses held by the PageMart entities.

In your petition, you state that on May 23, 2001, WebLink and its subsidiaries filed a voluntary petition for bankruptcy in the United States Bankruptcy Court, the Northern District of Texas, Dallas Division. You also state that WebLink and its subsidiaries have operated throughout the remainder of 2001 and into 2002 as debtors-in-possession, and currently remain in Chapter 11 bankruptcy.

The Commission will grant waivers of its regulatory fees on a sufficient showing of financial hardship. Evidence of bankruptcy or receivership is sufficient to establish financial hardship. See Implementation of Section 9 of the Communication Act, 10 FCC Rcd 12759, 12761-62 (1995) (waivers granted for licensees who stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership). You have submitted information showing that WebLink and its subsidiaries have been the subject of Chapter 11 bankruptcy proceedings since May 23, 2001. Therefore, your request for waiver of the FY 2001 regulatory fees in the amount of \$204,199.76 filed by WebLink on behalf of its subsidiaries is granted.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

00000 RRG-02-073

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

WEBLINK WIRELESS, INC.,)
DEBTOR-IN-POSSESSION)
PAGEMART II, INC.)
DEBTOR-IN-POSSESSION)
PAGEMART PCS, INC.)
DEBTOR-IN-POSSESSION)

FEE CONTROL NO.

Petition for Waiver of §§1.1152 and 1.1166(c)
of the Commission's Rules in Connection With
Annual Regulatory Fees)

To: FCC Secretary

**PETITION FOR
WAIVER OF REGULATORY FEES PAYMENT**

WebLink Wireless, Inc., Debtor-in-Possession ("WebLink"), PageMart II, Inc., Debtor-in-Possession, and PageMart PCS, Inc., Debtor-in-Possession (together, "the Parties"), pursuant to Sections 1.1166 and 1.1166(a)(2) of the Federal Communications Commission's ("Commission's") Rules, 47 C.F.R. §§1.1166 and 1.1166(a)(2) and by their attorneys, hereby seek a waiver of Sections 1.1152 and 1.1166(c) of the Commission's Rules, 47 C.F.R. §§ 1.1152 and 1.1166(c). Section 1.1152 **requires** that WebLink pay annual regulatory fees for its two subsidiaries, PageMart II, Inc., Debtor-in-Possession, and PageMart PCS, Inc., Debtor-in-Possession (together, "PageMart"). The PageMart entities hold licenses in the wireless telecommunications services. **As** permitted by Section 1.1166(a)(2), the Parties do not include a regulatory fee **payment**

with this Petition; and accordingly, they request a waiver of Section 1.1166(c) which requires the filing of a fee payment or a petition to defer payment due to financial hardship, supported by documentation of the financial hardship. Evidence of bankruptcy has been determined to be sufficient by the FCC to grant such a waiver. It is respectfully requested that the Commission waive the regulatory fee payment requirements due to the circumstances discussed below.

I. BACKGROUND

WebLink Wireless, Inc. filed voluntary petition forms along with its two referenced wholly owned subsidiaries^{1/} for bankruptcy in the United States Bankruptcy Court, the Northern District of Texas, Dallas Division, on May 23, 2001. See Exhibit 1. With these filings, the legal status of the Parties was converted to “debtors-in-possession.” The two subsidiaries currently hold radio licenses granted to them by the Commission in connection with WebLink’s provision of paging services to the public. The Parties operated through-out the remainder of 2001 and into 2002 as debtors-in-possession. They are still in Chapter 11 bankruptcy as of this date.

II. THE SECTION 1.1152 WAIVER IS IN THE PUBLIC INTEREST

The Parties request that they not be required to pay the regulatory fees that are associated with the provision of service over frequencies licensed to the PageMart subsidiaries.

Section 1.3 of the Rules provides that the Commission’s Rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. See

^{1/} See In re WebLink Wireless, Inc., Debtor, et al., Chapter 11 Case Nos. 01-34275-SAF-11, 01-34279-BJH-11; and 01-34277-HCA-11, Jointly Administered Under Case No. 01-34275-SAF-11, United States Bankruptcy Court, Northern District of Texas, Dallas Division.

Northeast Cellular Tel. Co. v. F.C.C., 897 F.2d 1164 (D.C. Cir. 1990). In addition, the United States Court of Appeals for the District of Columbia Circuit has stated that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. WAIT Radio v. F.C.C., 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Waiver is thus appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule. Northeast Cellular, 897 F.2d at 1166. Under the present circumstances, grant of the waiver request is clearly in the public interest.

Further, Section 1.1166 of the Commission's Rules provides that regulatory fees may be "waived...or deferred in specific instances...where good cause is shown and where waiver...or deferral of the fee would promote the public interest." Section 1.1166(a)(2) allows for waivers to be submitted without payment. Accordingly, the Parties request relief pursuant to these rule sections.

In Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12762 (1995), the Commission stated that evidence of bankruptcy or receivership is sufficient to establish financial hardship for purposes of waiving of regulatory fees. Further, in calculating the regulatory fees, the Commission routinely makes provisions for waivers. See Report and Order, Assessment and Collection of Regulatory Fees for Fiscal Year 2002, MD Docket No. 02-64, released July 3, 2002, Attachment B ("~~Where~~ appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated

exactly. These include ~~an~~ unknown number of waivers and/or exemptions that may occur in FY 2002...”)

On that basis, in Memorandum Opinion and Order, In Mobile Media Corporation, et al., 14 FCC Rcd 8017, 8027 (1999), the Commission waived application fees pursuant to Section 1.1117 of its Rules associated with the reorganization of a bankrupt paging carrier solely on the fact that its bankruptcy status served as “good cause” for waiver of filing fees. The Commission also held that “waiver of the fee will serve the public interest by enabling [the carrier] to preserve assets that will accrue to innocent creditors.” Supra. See also, In the Matter of Daniel R. Goodman Receiver: Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission’s Rules, Memorandum Opinion and Order, FCC 95-211 (rel. May 24, 1995).

In the present case, the Parties submit that their bankruptcy requires like treatment in the grant of this waiver request. See Melody Music, Inc. v. FCC, 345 F.2d, 730, 733 (D.C. Cir. 1965). As set forth above, the Parties have filed for Chapter 11 bankruptcy and have been awarded Debtor-in-Possession status.

In the absence of a waiver, WebLink will be required to pay \$204,199.76. See Exhibit 2. This is another financial burden which, based on FCC precedent, should be avoided because of the bankruptcy. As stated above, grant of this waiver would conserve funds better used to sustain operations to existing subscribers and, as the Commission pointed out in Mobile Media, supra, ~~this~~ payment would direct monies from the innocent creditors whose claims are already compromised in the bankruptcy proceedings.

In sum, it is a fact that the Commission’s Rules require that the referenced regulatory fees be filed on an **annual** basis and that the Parties have filed for bankruptcy

protection. In Mobile Media, supra, the Commission has established that bankruptcy, by itself, is good cause to permit the waiver of regulatory and application fees. **Thus**, a bankruptcy filing per se establishes financial hardship which justifies a grant of the waiver of Section 1.1152 to the Parties .

III. THE SECTION 1.1166(c) WAIVER IS IN THE PUBLIC INTEREST

Section 1.1166(c) requires that a petition for waiver of a regulatory **fee** must be accompanied by a fee payment and the Form 159. Without the fee payment, Section 1.1166(c) requires a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

However, **as** discussed above, in Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year. supra at 12762, the Commission stated that evidence of bankruptcy **or** receivership is sufficient to establish financial hardship for purposes of waiving of regulatory fees.

Further, Commission granted the parties' 2001 Petition for Waiver of Regulatory Fees, Fee Control No.: 00000RROG-01-044 on November **28, 2002**, which was filed without fees, on the basis that "WebLink's filing of a Chapter **XI** petition in bankruptcy court substantiates its claim of financial hardship and demonstrates good cause for waiver of its regulatory fees." The status of the Parties remains the same; accordingly, the Commission should grant this waiver of the provisions of Section 1.1166(c) of the Commission's Rules.

IV. CONCLUSION

For all of the foregoing reasons, the Parties respectfully request, pursuant to Sections 1.1166 and 1.1166(a)(2), that the Commission grant this petition for waiver of Sections 1.1152 and 1.1166(c) of the Commission's Rules, as discussed herein.


Respectfully submitted,

**WEblink WIRELESS, INC.,
DEBTOR-IN-POSSESSION**

**PAGEMART II, INC.,
DEBTOR-IN-POSSESSION**

**PAGEMART PCS, INC.,
DEBTOR-IN-POSSESSION**

By:



Audrey P. Rasmussen
David-L. Hill
Their Attorneys

Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
1120 20th Street, N.W.
Suite 700, North Building
Washington, D.C. 20036-3406
(202) 973-1210

Dated: August 22, 2002

EXHIBIT 1

~~See~~ Petition for Waiver of Application Fees, FCC File No. 0000465757, Exhibit **2**, which contains the **United** States Bankruptcy Court documents, filed with ~~the~~ **Federal** Communications Commission's Office of the Secretary on May 29, 2001. ~~This~~ Petition for Waiver of Application Fees **was** also directed to the Office of **Managing** Director.

EXHIBIT 2

Attached hereto are excerpts from the Form IOK filed by WebLink Wireless, Inc. with the Securities and Exchange Commission on December 31, 2001, which shows units in service as of December 31 2001 (on page 24 and 25 for wireless and traditional paging respectively).

Two way paging • 508,089 units x .24 = \$121,941.36

One way paging • 1,028,230 units x .08 = \$82,258.40

TOTAL \$204,199.76.

Attachment

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

(MARK ONE)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934 [FEE REQUIRED]

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2001

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

FOR THE TRANSITION PERIOD FROM TO

COMMISSION FILE NO 0-28196

WEBLINK WIRELESS, INC.

(Exact name of registrant as specified in charter)

DELAWARE

(State or other jurisdiction of
incorporation or organization)

75-2575229

(I.R.S. Employer
Identification Number)

3333 LEE PARKWAY, SUITE 100
DALLAS, TEXAS 75219

(Address of principal executive offices)

(Registrant's telephone number, including area code): (214) 765-4000

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT: NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

TITLE OF EACH CLASS

Class A Common Stock, par value \$0.0001 per share

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

The aggregate market value of the voting stock held by non-affiliates of the Registrant, based upon the closing sale price of the Class A Common Stock on January 31, 2002 on the over-the-counter bulletin board, was approximately \$1,178,453. Shares of Common Stock held by each executive officer and director and by each person who owns 5% or more of the outstanding Common Stock have been excluded in that such persons may be deemed to be affiliates. The determination of affiliate status for this purpose is not necessarily a conclusive determination for other purposes.

As of January 31, 2002, there were 42,277,136; 3,809,363; and 131,250 shares of the Registrant's Class A, Class B and Class D common stock outstanding, respectively. There were no shares of the Registrant's Class C common stock outstanding at January 31, 2002.

FISCAL YEARS 1999,2000 AND 2001

WIRELESS DATA DIVISION

The Company's Wireless Data Division is expected to be the source of the Company's growth in the future. Nationwide coverage was first offered on December 15, 1998 with coverage to 70% of the U.S. population. When the wireless data network was substantially completed in April 1999, approximately 90% of the U.S. population was covered. The following discussion analyzes the results of the division's operations, unless otherwise indicated.

Units in Service

The Company had 61,575 units in service as of December 31, 1999 compared to 353,780 as of December 31, 2000 and 508,089 as of December 31, 2001. The Company received its first shipments of full 2way wireless data devices in February 2000. In September 2000, the Company began receiving shipments of the Motorola Talkabout T900 which has contributed significantly to the unit growth in the Wireless Data Division. In July 2000, the Company added its first units in telemetry. As of December 31, 2001, the Company had 7,400 telemetry units in service included in total Wireless Data units in service.

Unit additions were 60,800,292,205 and 154,309 in 1999,2000 and 2001, respectively. In the quarters ended December 31, 2000 and 2001, the Wireless Data Division's average monthly disconnection rates were 2.2% and 2.23%, respectively.

TRADITIONAL PAGING DIVISION

The Company provides domestic paging services in its Traditional Paging Division. This division is a mature business requiring only a maintenance level of capital investment. Management expects EBITDA from this division to decline in 2002. The Traditional Paging Division has produced operating profits for 1999 and 2000. However, beginning in the fourth quarter of 2000, this division began incurring operating losses. The following discussion analyzes the results of the Traditional Paging Division's operations, unless otherwise indicated.

Units in Service

Units in service from domestic paging operations were 2,559,353, 1,864,560 and 1,028,230 as of December 31, 1999, 2000 and 2001, respectively. In addition, for 1999, PageMart Canada's units in service were 70,111. As a result of its ownership interest in PageMart Canada, the Company's proportional share of the units in service of PageMart Canada was 42,067 units at December 31, 1999. On February 1, 2000, the Company sold its ownership interest in PageMart Canada; therefore, the Company no longer reports a proportional share of the units in service of PageMart Canada (see Note 4 to the Consolidated Financial Statements of the Company).